



NRUC  
CORPORATION

100 NORTH TWENTIETH STREET  
SECOND FLOOR  
PHILADELPHIA, PA 19103  
215•569•2220

RECORDATION NO. 15517-R FILED  
JUN 29 1988-3 42 PM

INTERSTATE COMMERCE COMMISSION

No. 8-181A026  
JUN 29 1988

Date .....

Fee \$ 26.00

ICC Washington, D. C.

June 29, 1988

Interstate Commerce Commission  
12th & Constitution Avenues, N. W.  
Washington, D. C. 20423

Attention: Ms. Lee, Room 2303

Dear Ms. Lee:

Enclosed herewith is the original document described below and four fully executed copies to be recorded pursuant to Section 11303 of Title 49 of the U. S. Code.

This document is the Agreement of Assignment between NRUC Corporation and Chemical Bank of Canada, dated June 28, 1988. The primary document to which this is connected is recordation #15517.

The equipment to which this document relates is as follows:

197 Fifty foot, six inch - 70 Ton - Type XM Boxcars bearing car numbers as follows:

CN 418000 - CN 418078	79
CN 418089 - CN 418090	2
CN 418098	1
CN 418131	1
CN 418135	1
CN 418137 - CN 418139	3
CN 418143 - CN 418252	<u>110</u>
	197

A fee of \$13.00 is enclosed.

Very truly yours,

*John A. Mariscotti*  
John A. Mariscotti  
President

JAM/bar

enclosure

100 FIVE  
JUN 29 3 38 PM '88  
40701 300000 - 3011

# Interstate Commerce Commission

Washington, D.C. 20423

6/29/88

OFFICE OF THE SECRETARY

John A. Mariscotti  
President  
NRUC Corporation  
100 North 20th Street  
Second Floor  
Phila. PA. 19103

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 6/29/88 at 3:50pm, and assigned recordation number(s). 15517-R & 15517-S

Sincerely yours,



Secretary

Enclosure(s)

**AGREEMENT OF ASSIGNMENT**

**THIS AGREEMENT** made as of the 28th day of June, 1988

**B E T W E E N:**

**NRUC CORPORATION**

(hereinafter called the "Assignor")

OF THE FIRST PART,

- and -

**CHEMICAL BANK OF CANADA**

(hereinafter called the "Assignee")

OF THE SECOND PART

**WHEREAS:**

A. The Assignor carries on the business of buying, selling and leasing equipment.

B. Pursuant to a lease agreement made as of January 22, 1988, as amended, (collectively, the "Lease") between NRUC CORPORATION and CANADIAN NATIONAL RAILWAY COMPANY (the "Lessee"), the Assignor has agreed to lease to the Lessee 400 boxcars as described in Exhibit A of the Lease.

C. The cars described in Paragraph B above together with all parts, components, accessories, additions, alterations and improvements

RECORDATION NO. 15517R FILE NO.

**JUN 29 1988-3 12 PM**

**INTERSTATE COMMERCE COMMISSION**

thereto (and excepting all additions, alterations and improvements thereto made and removed by the Lessee pursuant to Paragraph 7.2 of the Lease) are hereinafter referred to as the "Car(s)".

D. The Lease has an initial term (hereinafter referred to as the "Term") of 108 months commencing on the date referred to in Paragraph 2 of the Lease as the "Commencement Date" (hereinafter called the "Commencement Date"), and the period from and after the Commencement Date to and including the last day of the Term of the Lease is hereinafter referred to as the "Unexpired Term".

E. The Lease provides for payment by the Lessee of rent to the Assignor consisting of daily rent of        U.S. per Car from the date each Car is Delivered, as that term is defined in the Lease ("Delivered", or herein sometimes referred to as the "Delivery" of a Car or Cars), to the Commencement Date (the aggregate of all such payments of daily rent in respect of the Cars is hereinafter referred to as "Interim Rent"), and monthly rent equal to        U.S. per Car from and after the Commencement Date and during the Unexpired Term of the Lease (the aggregate of all such payments of monthly rent in respect of the Cars is hereinafter referred to as "Basic Rent").

F. The Lease provides for an option to extend the term thereof for 6 years (the "Extended Term") at a monthly lease rental of        U.S. per Car. The Lease also provides that the Lessee shall have an option to purchase the Cars at the end of the Unexpired Term for        U.S.

per Car and an option to purchase the Cars at the end of the Extended Term for \$10,000 U.S. per Car.

G. The Assignor has offered to absolutely assign to the Assignee the right to payment of all Basic Rent payable to the Assignor under the Lease from and after the date hereof, together with other sums payable under the Lease as described in Paragraphs 1.01 to 1.03 hereof. The Assignor's offer to assign does not include, subject to Paragraph 1.04 hereof, the assignment of rentals during the Extended Term or the rights to the sales proceeds arising on any purchase of the Cars at the end of the Unexpired Term or Extended Term.

H. To induce the Assignee to enter into this agreement the Assignor has agreed to create a first security interest and first fixed mortgage and charge in favour of the Assignee in and to the Cars and the Lease (except the rights thereunder to be assigned absolutely as aforesaid) as security for the due performance by the Lessee of its obligations to the Assignor under the Lease and by the Assignor of its obligations under this agreement, but subject to the rights of the Lessee under the Lease.

I. It is the intention of the parties that the Assignee shall assume all credit risks in connection with the payment of all monies and credit assigned hereunder and that the Assignor shall have no personal liability or obligation to the Assignee with respect to the payment thereof.

J. It is further the intention of the parties that the transaction contemplated by this agreement shall not relieve the Assignor from or cause the Assignee to be liable for, the obligations of the Assignor under the Lease.

K. It is also the intention of the parties that Assignee will pay to Assignor \$100.00 U.S. per Car in consideration for this Assignment, with closings to take place from time to time from the date hereof to the Commencement Date in groups of not less than 25 Cars per closing upon not less than ten days prior written notice to Assignee of the closing date and the number of Cars for which settlement is to be made on such date; during the period between such closing date and the Commencement Date the Assignee shall be entitled to interest at the rate of 10% per annum on all amounts advanced hereunder.

NOW THEREFORE in consideration of the premises and of the parties' respective covenants and agreements herein:

#### ARTICLE ONE

#### ASSIGNMENT

##### **1.01 Assignment of Basic Rent and Interim Rent**

(1) The Assignor hereby absolutely assigns and transfers to the Assignee all monies and credit owing or to become owing in respect of or in lieu of Basic Rent payable to the Assignor under the Lease from and

after the Commencement Date and during the Unexpired Term of the Lease, both before and after default, and including, without limitation:

(a) all rights to payments of interest as provided for by Paragraph 5.4 of the Lease, in respect of any nonpayment of rentals or other amounts payable under the Lease and hereby assigned to the Assignee;

(b) all rights to payments of amounts in accordance with Paragraphs 8.1 and 8.2 of the Lease in respect of any Casualty Occurrence (as defined in the Lease, herein called a "Casualty Occurrence") with respect to any Car or Cars (all and any such amounts being hereinafter collectively referred to as the "Casualty Values"); provided that Assignee will remit to Assignor within 10 days of the receipt thereof any payment on account of the Casualty Values with respect to a Car or Cars which is in excess of the "Discounted Value" of such Car or Cars, as determined in accordance with Schedule A to this Assignment, as of the month in respect of which such Casualty Values are to be determined under the Lease (herein referred to as the "Discounted Value" of a Car or Cars, as applicable);

(c) all rights to payments pursuant to Paragraphs 5.2 and 9.2 of the Lease to the extent that such payments are in addition to Basic Rent and are made in order that the net amounts received by the lessor or the Assignee hereunder, after any withholding or deduction by the Lessee under the Lease, shall

equal the amount which would have been receivable by the lessor or the Assignee hereunder in the absence of such withholding or deduction (hereinafter referred to as "Additional Rent"); and

(d) all rights to payments pursuant to clause 13.2(b)(i) of the Lease on account of liquidated damages; provided that the Assignee will remit to the Assignor, within 10 days of the receipt thereof, any such payments so received by it which are in excess of the amount to which the Assignee is entitled in the event of default by the Lessee pursuant to section 5.01(4) hereof.

All present and future indebtedness of the Lessee for such Basic Rent, including without limitation such interest thereon and other amounts assigned in accordance herewith, including the amounts described in Paragraphs 1.01(1)(a) to 1.01(1)(d) above, inclusive, is hereinafter referred to as the "Basic Rent Indebtedness", which term shall include all payments of Interim Rent or amounts in lieu thereof assigned to the Assignee pursuant to Paragraph 1.01(2) below.

(2) The Assignor hereby assigns and transfers to Assignee all monies and credit owing or to become owing in respect of or in lieu of Interim Rent (including, without limitation and for greater certainty, all rights to payments of the types described in Paragraphs 1.01(1)(a) to (d) above, inclusive) payable to the Assignor under the Lease from and after the date hereof with respect to Cars Delivered prior to the date hereof, and from and after the date of Delivery with respect to each Car



delivered to the Lessee under the Lease subsequent hereto and with respect to which a prepayment has been made hereunder on account of the Assignment Price (as hereinafter defined), to the Commencement Date of the Lease., The Assignee shall apply the Interim Rent to interest at the rate of \_\_\_\_\_ per annum with respect to moneys advanced by Assignee with respect to Cars from the date of closing hereunder as to such Cars to the Commencement Date of the Lease in accordance with Paragraph 1.05 below. Any Interim Rent received by Assignee which is in excess of such interest shall be paid by the Assignee to Assignor within 10 days after the Commencement Date of the Lease.

**1.02        Assignment of Covenants by Lessee**

The Assignor hereby assigns and transfers to the Assignee the benefit in common with the Assignor, of all covenants by the Lessee in the Lease to the extent that the same relate to or affect the rights and obligations of the Assignor and the Lessee and including, without limitation, the covenants contained in Sections 5, 7, 8, 9, 11, 12, 13, 14 and 21 of the Lease.

**1.03        Assignee's Right to Enforce Payment Under the Lease**

In furtherance of the assignment and transfer in Paragraphs 1.01 and 1.02 above, the Assignor hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of or as attorney hereby irrevocably constituted for the Assignor as lessor or otherwise (as the case may be), to ask,

demand, sue for, collect, receive and enforce any and all sums payable under the Lease to which the Assignee is or may become entitled under this agreement and to endorse any cheques or other instruments received in connection therewith.

#### **1.04 Rights to Monies other than Basic Rent**

For greater certainty, subject to the provisions of Article Two below, rights to indemnification in respect of "Impositions" (as defined in the Lease, hereinafter called "Impositions"), other than payments on account of Additional Rent, and to any other monies other than Basic Rent Indebtedness owing under or payable in connection with the Lease during the Unexpired Term or any Extended Term shall remain the property of the Assignor, provided that in the event that an Event of Default (as described in Paragraph 13 of the Lease) by the Lessee occurs under the Lease such rights of the Assignor to other monies in respect of the Lease save and except monies payable in respect of Impositions (other than payments on account of Additional Rent) shall thereafter be postponed and subordinated to the rights of the Assignee under this agreement.

#### **1.05 Payment of Assignment Price**

(1) In consideration of the foregoing assignments and transfers the Assignee agrees to pay to the Assignor on the Commencement Date, subject to and conditional upon the terms and conditions hereinafter set forth, an amount equal to ~~US\$6.~~ \$6. U.S. in respect of each Car which has, on or prior to the Commencement Date, been Delivered

to and accepted by the Lessee under the Lease. The amount so payable hereunder is herein called, with respect to each Car and in the aggregate for all Cars, as applicable, the "Assignment Price".

(2) Notwithstanding Paragraph 1.05(1) above, but subject to the terms and conditions herein set forth, the Assignee shall pay to the Assignor on the date specified therefor by notice given by the Assignor to the Assignee in accordance with subparagraph 1.05(3)(d) below, the Assignment Price in respect of any Cars Delivered to the Lessee prior to the Commencement Date and for which Cars the Assignee has not previously paid any amount hereunder on account of the Assignment Price applicable thereto. In the event of any such payment the amount so paid by the Assignee shall be deducted from the amount otherwise payable by the Assignee on the Commencement Date with respect to such Cars under Paragraph 1.05(1). In consideration for such prepayment of the Assignment Price, the Assignee shall be entitled to interest on the amount so prepaid under this Paragraph at the rate of ~~5%~~ per annum, which interest shall be payable to the Assignee on the same dates on which Interim Rent is payable under the Lease. All Interim Rent received by the Assignee hereunder shall be applied first in satisfaction of the interest so charged, and the balance thereof shall, within 10 days after the Commencement Date and provided that the Assignor is not then in default of its obligations hereunder, and subject to the Assignee's rights under paragraph 1.04 above, be remitted to the Assignor in accordance with Paragraph 1.01(2) above.

(3) The obligation of the Assignee to pay or prepay any amount on account of the Assignment Price in respect of any Car or Cars under Paragraph 1.05(1) or (2) above shall be subject to each of the following conditions precedent being satisfied on the Commencement Date or on or prior to the date upon which any prepayment in respect of the Assignment Price is required hereunder, as applicable:

(a) on the date upon which the first payment on account of the Assignment Price is required to be made hereunder, whether upon the Commencement Date or prior thereto pursuant to Paragraph 1.05(2), the Assignor shall deliver to the Assignee:

(i) a Notice of Assignment and Direction in respect of the Lease in form and substance satisfactory to the Assignee, which Notice shall have been executed by the Assignor and the Assignee, and shall have been acknowledged by the Lessee by way of an Acknowledgement and Undertaking in form and substance satisfactory to the Assignee with respect to the assignments provided for in the Lease;

(ii) a legal opinion of the Assignor's counsel substantially in the form of the draft opinion annexed hereto as Schedule B, and as to such other matters as the Assignee or its counsel may reasonably request with respect to the Assignor, the Lease, this agreement or the perfection of the Assignee's interests hereunder;

(iii) evidence reasonably satisfactory to the Assignee of the registration and/or filing of this agreement, or financing statements with respect hereto, as appropriate, and of the Lease in all offices in the United States and, with respect to the Lease, in Canada in which such filing or recording is necessary or of advantage in order to protect the rights and interests of the Assignor in and to the Cars and Lease, and of the Assignee in and to the Cars, the Lease and the Basic Rent Indebtedness;

(iv) a certificate of good standing with respect to the Assignor issued by the Secretary of State or other appropriate public official of the jurisdiction in which the Assignor is incorporated; and

(v) such other documentation as the Assignee may reasonably require with respect to the due authorization, execution and delivery of this agreement and of the Lease by the Assignor, the Assignor's power and authority to enter into the transactions contemplated in the Lease and this agreement, the title of the Assignor to the Cars or its right as attorney for the owners thereof to enter into the Lease and this agreement and acceptance by the Lessee of the Cars;

(b) on the Commencement Date and on the date upon which any prepayment is required under Paragraph 1.05(2) above, the Assignor shall deliver to the Assignee, in addition to the documents required under subparagraph 1.05(3)(a) above, where applicable:

(i) a certificate of an officer of the Lessee in substantially the form of the certificate annexed hereto as Schedule C, dated as at the date upon which such payment or prepayment is required to be made hereunder; and

(ii) a certificate of a senior officer of the Assignor in substantially the form of the certificate annexed hereto as Schedule D, dated as at the date upon which such payment or prepayment is required to be made hereunder;

(c) as at the date upon which any payment or prepayment in respect of the Assignment Price is required to be made hereunder:

(i) the Assignor shall not be in default hereunder or under the Lease or under any certificate or instrument delivered in connection herewith or therewith, and all of its representations and warranties herein and in the Lease and in any such certificate or instrument shall be

true and correct as at and of such date, and all covenants to be performed by the Assignor hereunder and under the Lease shall have been duly performed to such date; and

(ii) the Lessee shall not be in default under the Lease or under any certificate or instrument delivered in connection therewith, including without limitation the Lessee's Acknowledgement and Undertaking referred to in clause 1.05(3)(a)(i) above, and all representations and warranties of the Lessee contained in the Lease or in any other such certificate or instrument shall be true and correct as at and of such date, and all covenants of the Lessee to be performed under the Lease and under any other such document or instrument shall have been duly performed;

(d) the Assignor shall have given written notice to the Assignee not less than ten days prior to the date upon which each prepayment is required to be made hereunder of the business day upon and the number of Cars (which shall not be less than 25) in respect of which, such prepayment is to be made, all of which Cars shall have been Delivered to the Lessee prior to the specified closing day.

Each of the foregoing conditions is hereby declared to be for the sole benefit of the Assignee, and any of such conditions may be waived by it in whole or in part as it may in its sole discretion determine.

(4) Payments on account of the Assignment Price shall be effected by delivery of a cheque or bank draft payable in U.S. funds to the Assignor or as it may otherwise in writing direct, or may be made, where so agreed, by wire transfer to the account of the Assignor at: Citizens and Southern National Bank, Columbia, South Carolina, ABA No. 0539-0037-7 for Easley Account, NRUC Corporation account #8701-0096, or to such person or account as it may otherwise in writing direct.

#### **1.06 Security**

The Assignor hereby grants to and in favour of the Assignee a continuing security interest in and to and a first fixed charge on and mortgage of:

- (a) the Lease and any amendments thereto;
- (b) the Cars, and all replacements or substitutions therefor;  
and
- (c) all right, title and interest of the Assignor in and to all warranties, service and other agreements applicable to the Cars, or the Lease;



together with all cash and other proceeds of the foregoing (including, without limitation, all insurance or other proceeds up to but not exceeding the Discounted Value of a Car or Cars, as the case may be, that indemnify or compensate the Assignor for any Cars lost, damaged, destroyed, seized under governmental authority or wrongfully taken), and in all the Assignor's rights and interests therein, as security for the due payment of Basic Rent Indebtedness owing under the Lease during the Unexpired Term or hereby assigned, and to compel the due performance by the Lessee of all of its obligations thereunder, and as security for the due performance by the Assignor of all of its obligations hereunder. The security interests granted herein shall also secure any claim of the Assignee for damages arising from the rejection of the Lease by the Assignor, or any trustee or other successor in interest of the Assignor, in any proceeding for liquidation or reorganization under bankruptcy or other applicable insolvency law. The security interests herein created and the mortgages and charges hereby constituted are subject to the rights of the Lessee under the Lease and do not include the rights validly and absolutely assigned under Paragraph 1.01 above. The charges and security interests hereby created shall attach upon the execution hereof and, with respect to any rights or interests acquired after the date hereof, upon the Assignor first acquiring rights therein.

**ARTICLE TWO**

**PARTIES' OBLIGATIONS**

**2.01       Obligations Under the Lease**

The Assignee does not by virtue of this agreement assume any obligations whatsoever under the Lease or in respect of the Cars, including, without limitation, any obligations relating to delivery, installation, maintenance and repair of the Cars, breach of any representation or warranty made to the Lessee or arising by operation of law in respect of the Cars, or the Lease, and claims of third parties relating to the infringement of patent, copyright or other rights. The Assignor agrees to honor all such obligations as are binding on it under the Lease. The Assignee agrees not to disturb the Lessee's quiet and peaceful possession of the Cars under the Lease so long as the Lessee is not in default of any of the provisions of the Lease.

**2.02       Indemnification of Assignee**

The Assignor shall indemnify the Assignee against all claims, demands, losses, damages, costs and expenses whatsoever which the Assignee may suffer or incur arising out of or in connection with breaches of the Assignor's obligations hereunder or under the Lease including, without limitation, any failure by the Assignor or any other person acting on behalf of the Assignor to perform the obligations under Paragraph 2.01 above or any breach by the Assignor of any covenant, representation or warranty relating to the Cars, the Lease or this

agreement or arising out of or in connection with any misrepresentation hereunder.

### **2.03      Preservation of Assignee's Rights**

Subject to Paragraph 2.01 above, the Assignor acknowledges that the Assignee shall have no obligation or liability to protect or preserve any rights of the Assignor in the Lease or the Cars; and, except in respect of the obligation of the Assignee under paragraph 2.01, the Assignor hereby releases the Assignee from any and all claims and demands and for liability in respect of any loss, cost, damage, expense or liability suffered or incurred by the Assignor as a result of, with respect to, or otherwise arising out of any omissions to act by the Assignee under the Lease or any act or neglect by or on behalf of the Assignee in connection with any default by the Lessee or the Assignor under the Lease or by the Assignor under this agreement or the failure by the Assignee to exercise any right or power granted hereunder with respect to the Lease, the Cars, or dealings with the Lessee.

## **ARTICLE THREE**

### **COVENANTS, REPRESENTATIONS AND WARRANTIES**

The Assignor hereby covenants, represents and warrants to the Assignee that:

3.01 the Assignor is a corporation duly continued and organized, validly existing and in good standing under the laws of South Carolina and has the corporate power and authority to own its property and assets and to carry on its business as now being conducted by it; the chief executive office of the Assignor and the location of its records relating to the Lease and the receivables arising thereunder is in Philadelphia, Pennsylvania, and the Assignor shall not change the location of its chief executive office or the location of such records without not less than ten days prior written notice to the Assignee;

3.02 the Assignor has the corporate power and authority, and the power and authority as duly constituted attorney for the owners of such of the Cars as are not owned by the Assignor, to enter into, execute and deliver this agreement and the Lease and to perform and carry out the terms and provisions hereof and thereof and has taken all necessary corporate action to authorize the execution and delivery hereof and of the Lease, and when executed and delivered this agreement will constitute a legal, valid and binding obligation of the Assignor and of the owners of such of the Cars as are not owned by the Assignor, enforceable in accordance with its terms;

3.03 neither the execution nor delivery of this agreement, nor the transaction contemplated herein, nor compliance with the terms and conditions hereof will:

(a) contravene any provision of law, statute, rule or regulation to which the Assignor is subject or any judgment, decree, franchise, order or permit applicable to it, or

(b) conflict with, or result in any breach of, or constitute a default under, or result in the creation or imposition of any lien, security interest, charge or encumbrance upon the Cars or the Lease pursuant to the terms of any agreement or other instrument to which the Assignor is a party or is subject or by which it may be bound;

**3.04** the Lease, an original or conformed copy of which has been delivered contemporaneously herewith, is in respect of the Assignor and, in respect of the Lessee, is to the best of the knowledge, information and belief of the Assignor, (i) genuine and in all respects what it purports to be, and (ii) a valid and binding obligation of the parties thereto, enforceable in accordance with its terms against such parties, and the Assignor shall not (without the prior written consent of the Assignee) enter into any agreement or do any other thing to derogate from its grant hereunder or prejudice the rights of the Assignee hereby created;

**3.05** with respect to Cars Delivered under the Lease prior to the date hereof the Lease is, and with respect to all other Cars hereafter Delivered thereunder the Lease will be, a good, valid and subsisting lease of the Cars which are described or referred to therein and in all Certificates of Acceptance which may be from time to time delivered

thereunder, and is in full force and effect unamended, and, to the best of the knowledge, information and belief of the Assignor there exists no event of default under the Lease and no event has occurred which would, with the giving of notice or lapse of time or both, constitute an event of default thereunder; the Assignor has not given any consents, approvals or waivers under or in respect of the Lease, and all statements contained therein in respect of the Assignor are, and in respect of the Lessee are to the best of the knowledge, information and belief of the Assignor, true and correct;

3.06 the Lease provides for payment of Interim Rent in the amount of \$100.00 U.S. per day per Car payable on March 1, 1988, May 1, 1988 and on the Commencement Date, and for payment of Basic Rent in the amount of \$1,000.00 U.S. per month per Car payable in advance on the first business day of each and every month during the Unexpired Term commencing November 1, 1988 to and including October 1, 1997; in each case such payments are subject to reduction only in respect of any Casualty Occurrence with respect to which the Lessee makes payment of the Casualty Values under the Lease; there has been no prepayment of Interim Rent or Basic Rent or any other monies payable under the Lease; the next payment of Interim Rent and the first payment of Basic Rent Indebtedness becomes due and payable on November 1, 1988; and all payments of Basic Rent Indebtedness are payable by the Lessee without interruption and free and clear of all claims, demands or setoffs which the Lessee may have against the Assignor, and notwithstanding, without limitation, (i) any loss of, damage to or destruction of any Car or Cars (subject to the Lessee's right after a Casualty Occurrence with respect to any Car to pay the

Casualty Values in respect thereof in lieu of Basic Rent), (ii) any modification, amendment or termination of the Lease in whole or in part made without the prior written consent of the Assignee, (iii) failure to deliver, or delay in delivery of, any Cars under the Lease and notwithstanding that all Cars contemplated therein may not have been delivered on or prior to the Commencement Date, and (iv) any breach or fundamental breach by the Assignor of or in respect of any of its obligations under the Lease;

3.07 the Assignor has duly and punctually observed and performed all covenants and obligations of any kind whatsoever on its part to be observed and performed under the Lease to the date hereof;

3.08 to the best of the knowledge, information and belief of the Assignor, the Cars are in good appearance, repair and working order and have been properly maintained as required by the Lease to the date hereof;

3.09 good and marketable title to the Cars described in Schedule E annexed hereto, and the legal right of the Assignor as attorney for the owners of the remaining Cars described in Schedule F annexed hereto (which Cars are owned by the persons indicated in such Schedule) to Lease the same to the Lessee under the Lease, and to assign such Lease and the Basic Rent Indebtedness, and to create the security interests provided for herein, is now irrevocably vested in the Assignor; the Cars and the Lease are free and clear of all defenses, set-offs, counterclaims, liens (including without limitation, to the best of the knowledge, information

and belief of the Assignor, any lien in respect of work done to or upon the Cars by any third party) taxes, charges and encumbrances, except for the Lessee's rights under the Lease;

3.10 the Assignor has delivered to the Assignee contemporaneously with its execution and delivery hereof Certificates of Acceptance signed by the authorized representative of the Lessee pursuant to the Lease with respect to such of the Cars as have been Delivered to the Lessee under the Lease, and subject to Paragraph 2(i) of the Lease, the Commencement Date in respect of the Lease is November 1, 1988, and the date upon which the Unexpired Term of the Lease expires, is October 31, 1997;

3.11 all consents, authorizations and approvals of third parties required to be obtained by the Assignor pursuant to Paragraph 11.1.8 of the Lease, or in order to permit the Assignor to enter into and perform its obligations under this agreement (if any) have been obtained, and true copies thereof have been delivered to the Assignee and to the Lessee where so required under the Lease;

3.12 the Assignor is a non-resident person within the meaning of section 116 of the Income Tax Act (Canada);

3.13 the Assignor has caused or will cause forthwith the following filings, recordings or registrations with respect to protection of the Assignor's and the Assignee's interests in the Lease, the Cars and the Basic Rent Indebtedness:



(a) the registration of each Car in the official Equipment Register and in the Universal Machine Language Equipment Register (UMLER);

(b) the filing and recording of the Lease and this agreement with the Interstate Commerce Commission in accordance with 49 U.S.C. section 11303;

(c) the filing and recording of this agreement, or financing statements with respect hereto, as applicable, under applicable state law in all jurisdictions where the same is necessary having regard to the assignments herein and the interests created hereunder;

(d) the depositing of the Lease with the Registrar General of Canada (with notice of such deposit given forthwith in the Canada Gazette) pursuant to section 86 of the Railway Act of Canada; and

(e) the registration of appropriate financing statements, in respect of the Lease, in the Provinces of Ontario, Manitoba and Saskatchewan, subject to the applicable law in such provinces.

**3.14** the Assignor will not, without the prior written consent of the Assignee, sell or dispose of the Cars or create, assume or suffer to exist any mortgage, charge, pledge, lien or other encumbrance, arising by or through the Assignor or the owners of any of the Cars, on the Cars or

on all or any of its or their rights, interests and benefits under or arising out of the Lease or this agreement, save and except for the interests granted under the Lease and this agreement; and

3.15 the Casualty Values payable in respect of a Casualty Occurrence under Paragraph 8.1 of the Lease where such Casualty Occurrence takes place on the lines of a railway other than the lines of the Lessee are, in all cases, not less than the amount otherwise payable in respect of such Casualty Occurrence under the Lease.

The representations and warranties of the Assignor herein which are expressed to be made on the basis of the knowledge, information and belief of the Assignor are not based upon any independent inquiry made by the Assignor.

#### **ARTICLE FOUR**

##### **RESTRICTIONS ON ASSIGNOR'S ACTIONS**

4.01 The Assignor will not accept the return of or repossess any of the Cars or modify, amend or alter any of the terms or conditions of the Lease or terminate or agree to the termination of the Lease, in whole or in part, or sell or otherwise dispose of, or consent to the sale or disposition of, all or any part of the Cars or provide or deliver any consent under or in connection with the Lease, without the Assignee's prior written consent which consent shall not be unreasonably withheld. Upon receipt by the Assignor of any notice given in connection with or

relating to the Lease or Cars, the Assignor shall forthwith furnish a copy thereof to the Assignee. In the event any of the Cars come into the Assignor's possession at any time after default by the Lessee under the Lease or with the prior written consent of the Assignee, and during the Unexpired Term of the Lease or while any amount remains outstanding on account of Basic Rent Indebtedness the Assignor will:

- (a) promptly notify the Assignee;
- (b) keep the Cars secured and in good repair;
- (c) hold the same as the Assignee's property and subject to its instructions; and
- (d) not permit any of the Cars to pass into the possession, custody or control of any person other than the Assignee;

provided that any of the foregoing actions taken by the Assignor shall be at the cost and expense of the Assignee, which cost and expense shall be added to the Basic Rent Indebtedness and shall be secured hereby. The Assignor shall have no authority to accept any collections of any sums under the Lease relating to Basic Rent Indebtedness on or after the date hereof. The Assignor shall hold in trust for the Assignee all monies received in connection with the Lease on account of the Basic Rent Indebtedness and shall forthwith pay such monies to the Assignee. The Assignee shall hold in trust for the Assignor and forthwith remit to it any amounts the Assignee receives from the Lessee which are not on

account of Basic Rent Indebtedness, including without limitation amounts paid by the Lessee in respect of Impositions (other than payments on account of Additional Rent).

## **ARTICLE FIVE**

### **EVENTS OF DEFAULT**

#### **5.01 Defaults by Lessee**

(1) If the Lessee defaults under the Lease, the Assignee's remedies shall be against the Lessee under this agreement and under the Lease.

(2) Except as herein otherwise provided (including without limitation under Paragraph 1.06 and 2.01 hereof), the Assignee shall have no recourse against the Assignor with respect to any default by the Lessee under the Lease. For greater certainty and without limitation, except for any liability pursuant to Paragraph 2.01 hereof the Assignor shall have no personal liability or obligation to the Assignee with respect to payment of any sums owed by the Lessee under the Lease in respect of Basic Rent Indebtedness.

(3) In the event of a default by the Lessee in any of its obligations under the Lease, or upon any repossession by the Assignee of any of the Cars, the Assignor shall at the request and expense of the

Assignee cooperate with the Assignee and use its best efforts to assist the Assignee in disposing of or re-leasing the Cars.

(4) Notwithstanding anything to the contrary herein, if the Assignor is not deemed to be in breach hereof under Paragraph 5.02(1), below, the Assignor shall be entitled to receive any proceeds of collection or realization arising from the Lessee's default under the Lease in excess of the aggregate of (i) the Basic Rent Indebtedness remaining unpaid to the date of collection by the Assignee of such proceeds; plus (ii) where the Lessee has defaulted under the Lease on or after the Commencement Date, the Discounted Value with respect to each Car calculated as at the date of collection by the Assignee of such proceeds or, where the Lessee has defaulted under the Lease prior to the Commencement Date, an amount equal to the difference between the aggregate of all prepayments on account of the Assignment Price made pursuant to paragraph 1.05(2), above, plus accrued interest thereon at the rate set forth in such Paragraph to the date of collection, less the amount referred to in clause 5.01(4)(i), plus (iii) the expenses (as hereinafter defined) of the Assignee.

#### **5.02 Default by Assignor**

(1) If the Assignor breaches any covenant, warranty or representation hereunder (provided that if such breach can be remedied it shall have remained unremedied 15 days after written notice of such breach from the Assignee to the Assignor), or if the Assignor or any owner of a Car or Cars shall become insolvent or bankrupt or shall be

subject to proceedings under applicable bankruptcy or insolvency law, or under any other legislation for the benefit of creditors now or hereafter in effect, or go into liquidation either voluntarily or under court order or make a general assignment for the benefit of creditors, or if a receiver or a receiver/manager is appointed with respect to all or any part of the assets or undertaking of the Assignor or of any owner of a Car or Cars, whether by a court or otherwise, or if the Assignor or any such owner seeks relief under any bankruptcy or insolvency law providing for the reorganization or winding-up of corporations, or providing for an agreement, composition, extension or adjustment with its creditors, or if the Assignor's interest, or the interest of any owner of a Car or Cars, in the Cars or the Lease is seized or attached by any third party, the Assignor shall be deemed to be in breach hereof and the Assignee shall be entitled to realize on the security interests hereby created and the charges hereby constituted (subject to the rights of the Lessee under the Lease).

(2) Notwithstanding the foregoing or anything to the contrary herein contained, if the Assignor is deemed to be in breach hereof by reason of the insolvency, bankruptcy, liquidation or receivership of any owner or owners of a Car or Cars other than the Assignor, or by reason of any other act or default of or proceeding against any such owner or owners or against a Car or Cars owned by any of them, then unless the Assignor shall have waived its right under this Paragraph 5.02(2) it shall be entitled to a period of 60 days from the receipt of written notice of such default from the Assignee to remedy the same or to otherwise make arrangements satisfactory to the Assignee with

respect thereto, provided that the Assignor shall indemnify the Assignee on demand with respect to any and all losses, costs, damages and expenses incurred or suffered by the Assignee by reason of the Assignee having granted to the Assignor such 60-day extended period in which to remedy such default or make other satisfactory arrangements, including with respect to any diminution in the value of its security hereunder or loss of payments on account of Basic Rent Indebtedness.

(3) If the Assignor is deemed to be in breach hereof under Paragraph 5.02(1), in addition to any other rights which it might have the Assignee may from time to time sell at public or private sale or otherwise realize upon all or any of the security interests hereby created and the mortgages and charges hereby constituted for such price in money or other consideration and upon such terms and conditions as it deems best acting in a commercially reasonable manner, the whole without advertisement or notice to the Assignor or others, and subject to the rights of the Lessee under the Lease and otherwise in accordance with law. All proceeds of any collection or realization of the securities, after deduction of accrued interest and penalties plus all expenses of collection, repossession, refurbishment, transportation and storage incurred by the Assignee together with all reasonable legal fees on a solicitor-and-his-own-client basis incurred in connection with the collection of any sum due hereunder or under the Lease (collectively the "expenses"), may be held by the Assignee as security hereunder pursuant to Paragraph 1.06 hereof or from time to time applied against any of the obligations hereby secured. If after such collection or realization there is any excess of the proceeds after the deduction of

expenses and of amounts owing hereunder or the payment of which is secured hereby, then the Assignee shall deliver such excess to the Assignor.

### **5.03        Miscellaneous Assignee Rights on Default**

No delay or omission to exercise any right or remedy accruing to the Assignee hereunder or under the Lease or otherwise shall impair any such right or remedy or be construed as a waiver of any breach or default nor shall any waiver of a single breach or default be deemed a waiver of any other. All waivers shall be in writing and signed by the parties. The Assignee's rights hereunder are cumulative and in addition to and not in substitution for any other rights and remedies which it may have under any other agreement or at law, and the Assignee may exercise or enforce any one or more of such rights or remedies successively or concurrently. To the maximum extent permitted by law, the Assignor hereby waives all rights, benefits and protection of any statutory provision from time to time with respect hereto, including without limitation, those given by The Limitation of Civil Rights Act (Saskatchewan), including section 18 thereof, by section 49 of The Law of Property Act (Alberta), by sections 19, 20, 21, 22, 23 and 24 of the Sale of Goods on Condition Act (British Columbia), and by sections 23, 24, 25, 26, 27 and 38 of the Chattel Mortgage Act (British Columbia), or any sections or statutes passed in amendment thereof or substitution therefor, and agrees that the same shall have no application hereto.



**ARTICLE SIX**

**MISCELLANEOUS**

**6.01      Legal Fees**

The Assignor covenants and agrees to pay promptly all reasonable costs and expenses incurred by the Assignee in connection with the preparation, execution, filing (including any renewal thereof) and delivery of this agreement and the filings and renewals related to the Lease including, without limitation, fifty percent (50%) of the fees and disbursements of its solicitors, and its agents, with respect thereto; provided that the Assignor shall not be required to pay any amount in respect of such costs and expenses in excess of \$10,000 in Canadian funds.

**6.02      Entire Agreement**

Except as expressly contemplated or provided herein, this agreement constitutes the entire agreement between the parties hereto and contains all of the representations and agreements of the respective parties, with respect to the subject matter hereof. There are no oral representations or agreements of any kind between the parties with respect to the subject matter hereof. None of the terms hereof may be modified except by a writing signed by authorized representatives of the parties hereto.

**6.03 Further Assurances**

Subject to paragraph 6.01 hereof, the Assignor covenants and agrees that it will at the request and expense of the Assignee at any time or times hereafter do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers, conveyances, consents, powers of attorney, assurances or other documents and take all such other actions as may be reasonably required for the assigning, transferring, granting, conveying, assuring and confirming to the Assignee, or for aiding or assisting in the reducing to possession by the Assignee, any of the interests or assets intended to be hereby transferred, conveyed and assigned, including without limitation all such actions as may be required to perfect and protect any and all rights and interests of the Assignee in and to the lease, the Cars, and all amounts owing thereunder or with respect thereto. The Assignee shall ensure that any registration by it in respect of or in connection with this agreement under the Personal Property Security Act (Ontario) or similar legislation shall specifically refer to the Lease in any space provided for optional collateral description.

**6.04 Effective Date**

This agreement is to be effective as of the date first above written.

**6.05      Discharge of Security Interests**

If the Assignor or the Lessee, their respective successors or assigns, shall pay or cause to be paid to the Assignee the monies absolutely assigned by this agreement and the monies secured by this agreement and shall otherwise observe and perform the terms of the Lease and if the Assignor shall observe and perform the terms of this agreement, the Assignee shall promptly at the request and at the expense of the Assignor, its successors or assigns, forthwith cancel and discharge the security interests created under this agreement, and forthwith execute and deliver to the Assignor, its successors or assigns, such deeds or other instruments as shall be requisite to cancel and discharge the security interests hereby created, and to effect such reassignment; provided that nothing stated in this agreement shall be construed as providing the Assignor or the Lessee with any right of prepayment of the monies absolutely assigned or secured by this agreement; and provided further that upon payment to Assignee on account of the Casualty Values of a Car or Cars which have been lost, damaged or destroyed of an amount equal to the Discounted Value thereof hereunder the Assignee shall promptly at the request of Assignor cancel and discharge the security interest created hereunder with respect to such lost, damaged or destroyed Car or Cars as provided in this Paragraph 6.05.

**6.06 Notice**

All notices or other communications authorized or required to be given pursuant to this agreement shall be in writing and either delivered by hand, registered or certified first class air mail, postage prepaid, or sent by telecommunication as follows:

In the case of the Assignee

Suite 1900  
150 York Street  
Toronto, Ontario  
Canada  
M5H 3S5

Attention: President

Telex: 06-218105  
Telecopier: (416) 864-9851

In the case of the Assignor:

NRUC Corporation  
100 North Twentieth Street  
Philadelphia, PA 19103

Attention: President  
Telecopier: 215-569-2314

Any such notice or other communication shall be deemed to have been given and received, if delivered, on the day on which it was delivered, and, if mailed, on the fifth business day following the day on which it was mailed, and, if sent by telecommunication, on the first business day following the day on which it was dispatched. No party hereto shall mail

any notice or other communication hereunder during any period in which postal workers in Canada or the United States are on strike or if such strike is imminent and may reasonably be anticipated to affect the normal delivery of mail. Either party hereto may change its address for receipt of notices or other communications by giving notice thereof to the other party in accordance with this section. For the purposes hereof, "business day" means any day other than a Saturday, a Sunday or a statutory holiday in the Province of Ontario or the Commonwealth of Pennsylvania.

**6.07        Governing Law**

This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and shall be treated in all respect as an Ontario contract, and the parties hereby attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario. All dollar amounts expressed in this agreement are in U.S. dollars unless otherwise noted. The words "herein", "hereunder" and other similar words refer to this agreement as a whole and not to any particular section or subsection hereof. Any provision herein prohibited by law shall to the extent prohibited be ineffective without invalidating any other provision hereof. The provision of headings herein is for convenience of reference only and shall not limit or restrict the interpretation hereof.

**6.08 Execution**

This agreement may be executed in separate counterparts, and by each party separately on a separate counterpart, each such counterpart, when so executed and delivered, to be an original. Such counterparts shall together constitute but one and the same instrument.

**6.09 Assignment**

The Assignee may assign all of its rights and obligations under this agreement to The Canada Life Assurance Company at any time, and in the event of any such assignment the Assignee shall be and be deemed to be released from all obligations and liabilities hereunder to the extent of the assignment thereof to and the assumption thereof by The Canada Life Assurance Company, including, without limitation, all obligations with respect to payment of the Assignment Price or any part thereof hereunder; provided that written notice of such assignment shall have been provided to the Assignor. Following any such assignment The Canada Life Assurance Company shall be and be deemed to be, for all purposes hereof, the "Assignee" hereunder. In the event of such an assignment to The Canada Life Assurance Company, The Canada Life Assurance Company shall further be entitled to assign this agreement for the purposes of complying with the requirements of applicable laws including any requirements under the laws of the United States or of any state, district or territory thereof or of any other jurisdiction for the benefit of its policyholders or creditors. The parties hereto may otherwise assign their respective rights and/or transfer their respective

obligations hereunder with the prior written consent of the other party hereto, such consent not to be unreasonably withheld.

**6.11 Successors and Assigns**

This agreement shall enure to the benefit of and be binding upon the respective successors and permitted assigns of the parties hereto.

IN WITNESS WHEREOF the parties hereto have executed this agreement in their own behalf and, in the case of the Assignor, on behalf of and as duly constituted attorney for the owner or owners, as applicable, of such of the Cars as are not owned by the Assignor, all as of the day and year first above written.

**CHEMICAL BANK OF CANADA**

by:  c/s

**NRUC CORPORATION**

by:  c/s

Vice - President

## Schedule A

### DISCOUNTED VALUE

The Discounted Value of any Car in respect of any month shall be the present value of the rentals otherwise due from and after the month or date, as the case may be, in respect of which such Discounted Value is to be determined hereunder, such present value to be determined as at, (i) with respect to a determination thereof in connection with a Casualty Occurrence, the first day of the month next following the month in which notice of a Casualty Occurrence has been given pursuant to Paragraph 8.1 of the Lease, plus, where payment of the Casualty Value under the Lease is not due thereunder until the first day of the second month following the month in which notice of a Casualty Occurrence has been so given, interest thereon from the first day of the preceding month calculated at the rate of 10.25% per annum, and (ii) where such determination is to be made in connection with a default by the Lessee contemplated in Paragraph 5.01 of this agreement, the first day of the month next following the month in which the Lease is terminated pursuant to Paragraph 13.2(b) of the Lease. In each case such present value shall be determined by discounting all rentals which would, but for such termination of the Lease or part thereof, then otherwise remain due from and after the month or date, as the case may be, in respect of which such present value is to be determined in accordance herewith to the end of the Unexpired Term at the Discount Rate (as hereinafter defined).

For the purposes hereof, the Discount Rate on or in respect of any date shall be the lesser of (A) 10.25% per annum and (B) the arithmetic mean of the two most recent weekly average yields to maturity for actively traded marketable U.S. Treasury fixed-interest-rate securities (adjusted to constant maturities equal to the remaining Weighted Average Life to Maturity of the Basic Rent Indebtedness), as published by the Federal Reserve Board in its Statistical Release H.15(519) for the two calendar weeks ending on the Saturday next preceding such date or, if such average is not published for such period, of such reasonably comparable index as may be designated by the Assignee. If no possible maturity exactly corresponds to such remaining Weighted Average Life to Maturity, yields for the two most closely corresponding published maturities shall be calculated pursuant to the immediately preceding sentence and the Discount Rate shall be interpolated from such yields on a straight-line basis rounding in each of such relevant periods to the nearest month.

"Weighted Average Life to Maturity" of the Basic Rent Indebtedness shall mean, as at the time of determination thereof, the number of years obtained by dividing the then Remaining Dollar-Years of such Basic Rent Indebtedness by the then outstanding principal balance of such Basic Rent Indebtedness (determined as the present value as at the relevant date of all rentals otherwise due on and after such date at the rate of 10.25% per annum compounded monthly in advance; the principal



balance in respect of Basic Rent Indebtedness for all Cars in the aggregate during any month of the Term being as set forth in the annexed Appendix).

"Remaining Dollar-Years" of the Basic Rent Indebtedness shall mean the amount obtained by (a) multiplying the amount of each payment on account of Basic Rent Indebtedness which would, but for termination of the Lease or part thereof, then otherwise remain due (including the final payment due on account thereof), by the number of years (calculated at the nearest one-twelfth) which will elapse between the date of determination of the Weighted Average Life to Maturity of such Basic Rent Indebtedness and the date of that required payment, and (b) totalling all of the products obtained in clause (a).

Notwithstanding the foregoing, in no event shall the Discounted Value in respect of any Car exceed the Casualty Value in respect thereof as determined under the Lease in respect of the applicable Casualty Occurrence or termination of the Lease, as the case may be.

# APPENDIX

Payment	Principal Amount	Payment	Payment		Remaining Principal
			Principal	Interest	
1	5.345.483.52	76000.00	30330.41	45659.59	5316353.11
2	5.316.353.11	76000.00	30589.48	45410.52	5285763.63
3	5.285.763.63	76000.00	30850.77	45149.23	5254912.86
4	5.254.912.86	76000.00	31114.29	44885.71	5223798.57
5	5.223.798.57	76000.00	31380.05	44619.95	5192418.52
6	5.192.418.52	76000.00	31648.09	44351.91	5160770.43
7	5.160.770.43	76000.00	31918.42	44081.58	5128852.01
8	5.128.852.01	76000.00	32191.06	43808.94	5096660.95
9	5.096.660.95	76000.00	32466.02	43533.98	5064194.93
10	5.064.194.93	76000.00	32743.33	43256.67	5031451.60
11	5.031.451.60	76000.00	33023.02	42976.98	4998428.58
12	4.998.428.58	76000.00	33305.09	42694.91	4965123.49
13	4.965.123.49	76000.00	33589.57	42410.43	4931533.92
14	4.931.533.92	76000.00	33876.48	42123.52	4897657.44
15	4.897.657.44	76000.00	34165.84	41834.16	4863491.60
16	4.863.491.60	76000.00	34457.68	41542.32	4829033.92
17	4.829.033.92	76000.00	34752.00	41248.00	4794281.92
18	4.794.281.92	76000.00	35048.84	40951.16	4759233.08
19	4.759.233.08	76000.00	35348.22	40651.78	4723884.86
20	4.723.884.86	76000.00	35650.15	40349.85	4688234.71
21	4.688.234.71	76000.00	35954.66	40045.34	4652280.05
22	4.652.280.05	76000.00	36261.77	39738.23	4616018.28
23	4.616.018.28	76000.00	36571.51	39428.49	4579446.77
24	4.579.446.77	76000.00	36883.89	39116.11	4542562.88
25	4.542.562.88	76000.00	37198.94	38801.06	4505353.94
26	4.505.363.94	76000.00	37516.68	38483.32	4467847.26
27	4.467.847.26	76000.00	37837.14	38162.86	4430010.12
28	4.430.310.12	76000.00	38160.33	37839.67	4391849.79
29	4.391.849.79	76000.00	38486.28	37513.72	4353363.51
30	4.353.363.51	76000.00	38815.02	37184.98	4314548.49
31	4.314.548.49	76000.00	39146.56	36853.44	4275401.93
32	4.275.401.93	76000.00	39480.94	36519.06	4235920.99
33	4.235.920.99	76000.00	39818.17	36181.83	4196102.82
34	4.196.102.82	76000.00	40158.29	35841.71	4155944.53
35	4.155.944.53	76000.00	40501.31	35498.69	4115443.22
36	4.115.443.22	76000.00	40847.26	35152.74	4074595.96
37	4.074.595.96	76000.00	41196.16	34803.84	4033399.80
38	4.033.399.80	76000.00	41548.04	34451.96	3991851.76
39	3.991.851.76	76000.00	41902.93	34097.07	3949948.83
40	3.949.948.83	76000.00	42260.85	33739.15	3907687.98
41	3.907.687.98	76000.00	42621.83	33378.17	3865066.15
42	3.865.066.15	76000.00	42985.89	33014.11	3822080.26
43	3.822.080.26	76000.00	43353.06	32646.94	3778727.20
44	3.778.727.20	76000.00	43723.37	32276.63	3735003.83
45	3.735.003.83	76000.00	44096.84	31903.16	3690906.99
46	3.690.906.99	76000.00	44473.50	31526.50	3646433.49
47	3.646.433.49	76000.00	44853.38	31146.62	3601580.11
48	3.601.580.11	76000.00	45236.50	30763.50	3556343.61
49	3.556.343.61	76000.00	45622.90	30377.10	3510720.71
50	3.510.720.71	76000.00	46012.59	29987.41	3464708.12
51	3.464.708.12	76000.00	46405.62	29594.38	3418302.50
52	3.418.302.50	76000.00	46802.00	29198.00	3371500.50
53	3.371.500.50	76000.00	47201.77	28798.23	3324298.73

54	3.324.298.73	76000.00	47604.95	28395.05	3276693.78
55	3.276.693.78	76000.00	48011.57	27988.43	3228682.21
56	3.228.682.21	76000.00	48421.67	27578.33	3180260.54
57	3.180.260.54	76000.00	48835.27	27164.73	3131425.27
58	3.131.425.27	76000.00	49252.41	26747.59	3082172.86
59	3.082.172.86	76000.00	49673.11	26326.89	3032499.75
60	3.032.499.75	76000.00	50097.40	25902.60	2982402.35
61	2.982.402.35	76000.00	50525.31	25474.69	2931877.04
62	2.931.877.04	76000.00	50956.88	25043.12	2880920.16
63	2.880.920.16	75000.00	51392.14	24607.86	2829528.02
64	2.829.528.02	76000.00	51831.11	24168.89	2777696.91
65	2.777.696.91	76000.00	52273.84	23726.16	2725423.07
66	2.725.423.07	76000.00	52720.34	23279.66	2672702.73
67	2.672.702.73	76000.00	53170.66	22829.34	2619532.07
68	2.619.532.07	76000.00	53624.83	22375.17	2565907.24
69	2.565.907.24	76000.00	54082.88	21917.12	2511824.35
70	2.511.824.36	76000.00	54544.83	21455.17	2457279.53
71	2.457.279.53	76000.00	55010.74	20989.26	2402268.79
72	2.402.268.79	76000.00	55480.62	20519.38	2346788.17
73	2.346.788.17	75000.00	55954.52	20045.48	2290833.65
74	2.290.833.65	76000.00	56432.46	19567.54	2234401.19
75	2.234.401.19	76000.00	56914.49	19085.51	2177486.70
76	2.177.486.70	76000.00	57400.63	18599.37	2120086.07
77	2.120.086.07	76000.00	57890.93	18109.07	2062195.14
78	2.062.195.14	76000.00	58385.42	17614.58	2003809.72
79	2.003.809.72	76000.00	58884.13	17115.87	1944925.59
80	1.944.925.59	76000.00	59387.09	16612.91	1885538.50
81	1.885.538.50	76000.00	59894.36	16105.64	1825544.14
82	1.825.644.14	76000.00	60405.96	15594.04	1765238.18
83	1.765.238.18	76000.00	60921.92	15078.08	1704316.26
84	1.704.316.26	76000.00	61442.30	14557.70	1642873.96
85	1.642.873.96	75000.00	61967.12	14032.88	1580905.84
86	1.580.906.84	76000.00	62496.42	13503.58	1518410.42
87	1.518.410.42	76000.00	63030.24	12969.76	1455380.18
88	1.455.380.18	76000.00	63568.63	12431.37	1391811.55
89	1.391.811.55	76000.00	64111.61	11888.39	1327699.94
90	1.327.699.94	76000.00	64659.23	11340.77	1263040.71
91	1.263.040.71	76000.00	65211.53	10788.47	1197829.18
92	1.197.829.18	76000.00	65768.54	10231.46	1132060.64
93	1.132.060.64	76000.00	66330.32	9659.68	1065730.32
94	1.065.730.32	76000.00	66896.89	9103.11	998833.43
95	998.833.43	75000.00	67468.30	8531.70	931365.13
96	931.365.13	76000.00	68044.59	7955.41	863320.54
97	863.320.54	76000.00	68625.80	7374.20	794694.74
98	794.694.74	76000.00	69211.98	6788.02	725482.76
99	725.482.76	76000.00	69803.17	6196.83	655679.59
100	655.679.59	76000.00	70399.40	5600.60	585280.19
101	585.280.19	76000.00	71000.73	4999.27	514279.46
102	514.279.46	76000.00	71607.20	4392.80	442672.26
103	442.672.26	75000.00	72218.84	3781.16	370453.42
104	370.453.42	76000.00	72835.71	3164.29	297617.71
105	297.617.71	76000.00	73457.85	2542.15	224159.86
106	224.159.86	76000.00	74085.30	1914.70	150074.56
107	150.074.56	76000.00	74718.11	1281.89	75356.45
108	75.356.45	76000.00	75356.33	643.67	0.12

**SCHEDULE "B"**

**[Letterhead of Counsel to NRUC Corporation]**

June o , 1988

Chemical Bank of Canada  
Suite 1900  
150 York Street  
Toronto, Ontario

- and -

The Canada Life Assurance Company  
330 University Avenue  
Toronto, Ontario  
M5G 1R8

- and -

Campbell, Godfrey & Lewtas  
P.O. Box 36  
Toronto Dominion Bank Tower  
Toronto-Dominion Centre  
Toronto, Ontario  
M5K 1C5

Dear Sirs:

**Agreement of Assignment between NRUC  
Corporation and Chemical Bank of Canada  
made as of June 28, 1988**

We are attorneys for NRUC Corporation ("NRUC") and have acted in that capacity in connection with a lease of railway cars made as of January 22, 1988, between NRUC and Canadian National Railway Company (the "Lessee"), as amended (the "Lease") and in connection with the assignment of rentals owing thereunder and creation of security interests in such Lease and the rail cars subject thereto (the "Cars") pursuant to an Agreement of Assignment (the "Assignment") made as of June o , 1988 between NRUC and Chemical Bank of Canada, as assigned by Chemical Bank of Canada to The Canada Life Assurance Company (the "Assignee").

In connection with the foregoing and for purposes of this opinion, we have reviewed originals of the following documents:

1. the Lease;
2. the Assignment;
3. a Notice of Assignment and Direction from NRUC and the Assignee to the Lessee dated as of June 28, 1988 (the "Notice");
4. a Notice of Assignment from Chemical Bank of Canada and the Assignee to NRUC dated June 28, 1988; and
5. Powers of attorney executed in favour of NRUC by the owners of such of the Cars as are not owned by NRUC appointing NRUC as attorney on behalf of such owners (collectively, the "Owners") to enter into, execute and deliver the Lease and the Assignment and all documents ancillary thereto or necessary for the purposes of giving effect to the transactions contemplated therein.

We have also examined such corporate records of NRUC, certificates of public officials and officers of NRUC and other documents, and have made such other searches and investigations, as we have considered necessary or appropriate.

In addition, we have assumed the completeness of all documents submitted to us as original documents, the conformity to original documents of all documents submitted to us as true, certified, conformed or photostatic copies thereof and the genuineness of all signatures on and the authenticity and completeness of the originals of such copies. We have also assumed (i) the due authorization, execution and delivery of each of the Lease, the Assignment and the Notice by all parties thereto other than NRUC and the enforceability of such documents against such other parties; and (ii) that the Assignment and the Lease are enforceable in accordance with their respective terms under the laws of the Province of Ontario, which laws are expressed to govern such instruments.

We are members of the Bar of the State of o , and are not qualified to express opinions with respect to the laws of any other jurisdiction other than the state of o and federal laws of the United States of America applicable therein. To the extent that the following opinions relate to matters governed by the laws of jurisdictions other than o and the federal laws of the United States applicable therein, we have relied upon the opinion of o , a copy(ies) of which is(are) delivered herewith. Such opinion(s) is(are) satisfactory to us in form and scope.

Based on the foregoing and subject to the qualifications hereinafter expressed, we are of the opinion that:

1. NRUC has been duly incorporated and organized and at the date hereof is a valid and subsisting corporation and in good standing under the laws of the State of South Carolina, and is in good standing as a foreign corporation under the laws of the Commonwealth of Pennsylvania.
2. NRUC has the corporate capacity and power to own its assets, to carry on its business as currently conducted and to enter into and perform its obligations under each of the Lease, the Assignment and the Notice, and all corporate approvals and authorizations of directors and shareholders of NRUC, if any, and all approvals and authorizations of third parties (including, without limitation, all necessary governmental and/or court approvals and authorizations), necessary with respect thereto and to performance by NRUC of its obligations under each of such instruments have been obtained.
3. NRUC is duly authorized and has full power and authority as duly appointed and irrevocable attorney for the Owners to enter into, execute and deliver each of the Lease, the Assignment and the Notice with respect to such of the Cars as are not owned by NRUC.
4. Each of the Lease, the Assignment and the Notice have been duly authorized, executed and delivered by NRUC, both on its own behalf and as duly constituted attorney for the Owners, and is and, if the laws of a jurisdiction other than Canada are deemed to govern such instruments, would be a valid and binding instrument, enforceable in accordance with its respective terms against each of NRUC and the Owners.
5. The execution and delivery of each of the Lease, the Assignment and the Notice, and the performance by NRUC of its obligations thereunder, do not and will not conflict with, result in a breach of or constitute a default under any law or any of the provisions of the articles of incorporation, as amended, or by-laws of NRUC, or of any agreement, judgement, order or ruling to which NRUC is a party or by which it or any of its assets are bound including, without limitation, under any management or other agreement between NRUC and any of the Owners.
6. Each of the Lease and the Assignment, or a financing statement in respect thereof, has been duly registered, filed or recorded, as applicable, in each of the offices in which the same is required pursuant to subparagraphs 3.13(a), (b) and (c) of the Assignment, against NRUC and/or the Owners, to the extent necessary or desirable under the laws governing such registrations, filings or

recordings; and such registrations, filings or recordings are all those which are necessary or of advantage under applicable United States federal or state law to preserve, perfect or protect the rights and interests of the Assignee in and to the Cars, the Lease and the assignments created under the Assignment. The particulars of all such registrations, filings or recordings are set forth in Schedule A annexed to this opinion.

7. Based upon searches performed by us or on our behalf (copies of which have been delivered to you contemporaneously herewith or prior to the date hereof), as at the respective dates of registration of the Assignment or financing statements in respect thereof in each of the offices indicated on Schedule A, there were no other registrations, filings or recordings in any of such offices or in any other relevant federal or state registry against the Cars, the Lease or the rights and interests created under the Assignment ranking or capable of ranking on a parity with or in priority to the rights and interests of the Assignee pursuant to the Assignment and, to the best of our knowledge after having made due inquiries and such investigations as we have deemed prudent or desirable, there are no possessory or other liens, charges or encumbrances (including, without limitation, liens for taxes or other governmental charges or impositions) upon any of the Cars, the Lease or the Basic Rent Indebtedness except for the Lessee's interests under the Lease and the Assignee's interests under the Assignment.

The opinion set forth in paragraph 4 above with respect to the enforceability of the Lease, the Assignment and the Notice is subject to the qualifications that the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws relating to or affecting the enforceability of creditors' rights generally and by general equitable principles. Notwithstanding the foregoing, the Lease, the Assignment and the Notice, taken as a whole, contain provisions which should be adequate to provide for the practical realization by the Assignee of the rights and benefits intended to be afforded thereby.

Yours truly,

# CERTIFICATE

I, \_\_\_\_\_, hereby certify that I am the \_\_\_\_\_ of NRUC Corporation (the "Assignor"), the Assignor pursuant to Agreement of Assignment between NRUC Corporation and Chemical Bank of Canada, as assigned by Chemical Bank of Canada to The Canada Life Assurance Company (the "Assignment") and as such hereby certify to you, pursuant to subparagraph 1.05(3)(b) of the Assignment, that:

3. the Cars identified in Appendix "A" annexed to this Certificate have been Delivered to and accepted by Canadian National Railway Company under the Lease, and all registrations, recordings and filings with respect thereto required under the Lease or by Paragraphs 3.13 (a), (b), (c) or (d) of the Assignment, or which are otherwise necessary or of advantage to perfect, protect and preserve the Assignor's and your interests in and to such Cars, the Lease and the Basic Rent Indebtedness pursuant to the Lease or to the Assignment, as the case may be, have been duly made, and annexed hereto as Appendix "B" is a summary of such registrations, filings and recordings, together with a list of the owners of Cars where the same are not owned by the Assignor, and together with duly executed duplicate original powers of attorney from the owners thereof in favour of the Assignor authorizing the Assignor to subject the Cars to the Lease and to enter into the Lease and Assignment with respect to the Cars as duly constituted attorney for such owners.





SCHEDULE "D"

CERTIFICATE

To: NRUC Corporation

And To: The Canada Life Assurance Company

I, \_\_\_\_\_, hereby certify that I am the \_\_\_\_\_ of Canadian National Railway Company, the Lessee under a Lease Agreement made as of January 22, 1988 between NRUC Corporation and Canadian National Railway Company ("CNR"), and in connection therewith certify on behalf of CNR that:

1. \_\_\_\_\_ as of the date hereof CNR is not in default of any of its covenants or obligations under the Lease or under the Acknowledgement and Undertaking delivered to you dated as of June 0 , 1988, or under any other certificate or instrument delivered to you by CNR in connection with the Lease, nor has any event occurred which would, with the giving of notice or lapse of time, or both, constitute an event of default under any of such agreements or instruments;

2. \_\_\_\_\_ all representations and warranties of CNR contained in the Lease, the Acknowledgement and Undertaking and in any other such certificate or instrument are true and correct as at the date hereof; and

3. \_\_\_\_\_ the Cars identified in Appendix "A" annexed to this Certificate have been "Delivered" to CNR (as defined in the Lease) and have been accepted by it, and CNR hereby waives its right pursuant to Paragraph 11.1.8 of the Lease to terminate the Lease as it relates to such Cars and certifies that the Lease is full force and effect with respect thereto.

This Certificate is delivered to you pursuant to the Lease and to CNR's Acknowledgment and Undertaking referred to above.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1988.

CANADIAN NATIONAL RAILWAY  
COMPANY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



NRUC  
CORPORATION

Schedules E and F

## INTEROFFICE MEMO

TO: William Kehl

FROM: Robert L. Shiner, Jr. *RLS*

SUBJECT: CN Deliveries - Closing.

DATE: June 23, 1988

Delivered and Accepted to Date: Lots #1 through #6.

NRUC Owned Cars:

CN 418000 - 418024	25 Cars
CN 418025 - 418049	25 Cars
CN 418050 - 418070	21 Cars
CN 418073 - 418077	5 Cars
CN 418143 - 418176	34 Cars
CN 418178 - 418217	40 Cars
Actually Delivered	<u>150 Cars</u>

Anticipated Acceptance and Delivery: June 28, 1988.

NRUC Owned Cars

CN 418177	1 Car
CN 418218 - 418252	35 Cars

Total Projected at Closing 186 Cars NRUC Owned.

Managed Cars - Accepted and Delivered:

<u>Car Number</u>	<u>Owner</u>
CN 418071	Edward F. Haag
CN 418072	William W. Kehl
CN 418078	Edward F. Haag
CN 418089	Nathan A. Einstein
CN 418090	R. Hunter Park
CN 418135	Howard W. Moore
CN 418137	Howard W. Moore
CN 418138	Howard W. Moore
Actual Delivered	(8) Eight - Managed Cars

Anticipated Accepted and Delivered - June 28, 1988:

CN 418131	Dr. Howard E. & Minor M. Shaw ✓
CN 418098	Dottie King ✓
CN 418139	Howard W. Moore ✓
	(3) Three

Total Projected at Closing:

(11) Eleven

Grand Total

197

STATE OF PENNSYLVANIA

:

:

SS.

COUNTY OF PHILADELPHIA

:

On this 29<sup>th</sup> day of June, 1988, before me personally appeared Robert L. Shiner to me personally known who, being by me duly sworn, says that (s)he is the Vice President of NRUC Corporation, that the seal affixed to the attached instrument is the seal of said organization, that said instrument was signed and sealed on behalf of said organization by authority of its governing body, and (s)he acknowledged that the execution of the foregoing instrument was the free act and deed of said organization.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Barbara Ann Rastetter  
NOTARY PUBLIC

BARBARA ANN RASTETTER  
Notary Public, Phila., Phila. Co.  
My Commission Expires April 14, 1990

MY COMMISSION EXPIRES:

PROVINCE OF ONTARIO, CANADA )  
MUNICIPALITY OF )  
METROPOLITAN TORONTO )

ss.:

On this 28<sup>th</sup> day of June, 1988, before me personally appeared Gregory A. Bewsh, to me personally known, who, being by me duly sworn, says that he is the Assistant Vice-President of Chemical Bank of Canada, that said instrument was signed on behalf of said Company by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Company.

Gregory A. Bewsh  
NOTARY PUBLIC IN AND FOR  
THE PROVINCE OF ONTARIO

NOTARIAL SEAL

CANLIFE.006